

Before the
Federal Communications Commission
Washington, DC

In the Matter of)	
)	
Petitions of the Verizon Telephone Companies)	WC Docket No. 06-172
for Forbearance Pursuant to 47 U.S.C. § 160(c))	
in the Boston, New York, Philadelphia,)	
Pittsburgh, Providence and Virginia Beach)	
Metropolitan Statistical Areas)	
)	

**COMMENTS OF COX COMMUNICATIONS, INC. ON
PETITION FOR RECONSIDERATION OF PROTECTIVE ORDER**

Cox Communications, Inc., on behalf of its affiliates Cox Rhode Island Telcom, LLC and Cox Virginia Telcom, Inc. (collectively, “Cox”), by its attorneys, hereby submits its comments in response to the Petition for Reconsideration of Protective Order (the “Petition”) filed by NuVox Communications and XO Communications, Inc. in the above-referenced proceeding.¹ Cox does not oppose modification of the protective order, but submits that the Commission should recognize that any changes should not discourage parties from providing confidential information on a voluntary basis and should adopt additional protection for information that is designated as highly sensitive by the parties.

As the underlying petitions demonstrate, Cox is the principal competitor to Verizon in two of the markets that are the subject of this proceeding, and Cox’s services and facilities are central to Verizon’s competition claims in those markets.² Consequently, Cox anticipates participating actively in this proceeding, much as it participated in the Qwest Omaha forbearance

¹ Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172 (the collectively, the “Verizon Forbearance Petitions”). Individual petitions will be referred to by the market names used in the titles of those petitions.

² See, e.g., Providence Petition at 4-7; Virginia Beach Petition at 4-7.

proceeding.³ If the Omaha proceeding is any guide, Cox's participation is likely to include providing the Commission with confidential business information concerning Cox's operations, capacity and facilities in the Providence and Virginia Beach MSAs. Indeed, Cox is likely to be the party with the most relevant data on the central issues in this proceeding.⁴

Given Cox's experience in the Omaha proceeding, and the recent attacks on the terms of the protective order in that proceeding, Cox has a strong interest in ensuring that the Commission adopts reasonable terms for any protective order in this proceeding, and that the Commission abides by those terms during the pendency of this proceeding and once the proceeding is concluded.⁵ Cox's interest is particularly strong because, acting in reliance on the protective order in the Omaha proceeding, it provided the Commission with highly sensitive information concerning the geographic distribution of its customers and services.⁶ In this context, Cox submits that any modification to the protective order in this proceeding should meet two requirements: (1) It should not discourage parties from providing confidential information to the Commission on a voluntary basis; and (2) It should provide for additional protection for information that is reasonably designated as highly sensitive by a party to the proceeding.

³ See, e.g., Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160 in the Omaha Metropolitan Statistical Area, *Memorandum Opinion and Order*, 20 FCC Rcd 19415, 19430, 19445, 19448 (2005) (the "*Omaha Forbearance Order*").

⁴ See *id.* at 19450-51.

⁵ See Motion to Modify Protective Order of Broadview Networks, Inc., Covad Communications Group, NuVox Communications, Inc., and XO Communications, Inc., WC Docket No. 04-223, filed Oct. 11, 2006 (erratum, Oct. 13, 2006).

⁶ See Letter of J.G. Harrington, counsel to Cox, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-223, August 24, 2005; Letter of J.G. Harrington, counsel to Cox, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-223, August 27, 2005; Letter of J.G. Harrington, counsel to Cox, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-223, August 31, 2005; Letter of J.G. Harrington, counsel to Cox, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-223, September 19, 2005.

The Commission's most important interest in this proceeding is to obtain a record that allows it to reach accurate conclusions regarding the underlying petitions for forbearance. As the *Omaha Forbearance Order* demonstrates, sensitive, confidential information provided to the Commission by parties in the proceeding is essential to reaching such conclusions.⁷ In practice, this information is provided voluntarily by parties like Cox that have an interest in assisting the Commission's efforts.

However, the Commission also should recognize that parties' incentives to cooperate depend, in large part, on their ability to maintain the confidentiality of the information they provide. This is particularly the case when, as is the case in the local telephone market, there are many smaller competitors, all seeking competitive advantages over not just the incumbent carrier, but also over their brethren. It is not an exaggeration to suggest that even seemingly inconsequential disclosures could affect the ability of smaller competitors to succeed in the marketplace. Thus, if parties cannot be assured that their confidential information will remain confidential, they are less likely to make it available to the Commission.

Further, the data provided in any Section 10 forbearance proceeding is most useful only in the context of that specific proceeding, and its usefulness in other proceedings will diminish over time. Thus, granting such an expansive petition, which essentially assumes that market-specific data will be decisionally significant in proceedings involving other markets and competitors, puts sensitive business information at risk without necessarily creating any significant benefits. This is a particular concern because the action requested in the Petition would permit an open-ended list of parties and persons to have access to the information in this proceeding, with ever-increasing risk of disclosure as the circle of people who are permitted

⁷ See, e.g., *Omaha Forbearance Order*, 20 FCC Rcd at 19450-51.

access grows. A better solution would be to evaluate the process by which and conditions under which access to such information would be available in each successive forbearance proceeding.

The consequence of this calculus is that the Commission should avoid changes to the protective order that will reduce the incentives of parties to cooperate fully or to provide information on a voluntary basis. In particular, the Commission should be mindful that its ability to obtain the data it wants will be affected by changes in the protective order that make information more widely available – either during or after the conclusion of the proceeding – or that make participants less certain that their information will be protected.⁸ Regardless of the specific changes being contemplated, it is critical that the Commission analyze the potential impact of changes in the protective order before taking any action.

The second issue that should be addressed if the protective order is modified is the status of highly sensitive information – information that, if disclosed, could create particularly meaningful competitive harm. Examples of this type of information would include data on customer penetration by wire center and/or by service; estimates of future penetration or subscribership; materials that indicate what future geographic or product markets a company is planning to target; pricing and advertising strategies; information on deployment of specific facilities, technologies, capacities and services; customer-specific information and information on planned equipment purchases or deployment. These types of information are significantly more sensitive than other types of confidential information, such as aggregated customer or line

⁸ For instance, it is reasonable to conclude that modifications that widen the class of participants who may receive confidential information or that limit the obligation to destroy confidential information once the proceeding is completed would have such an effect.

counts, because they would assist competitors in determining how to respond to other market participants.⁹

Moreover, this type of market-specific information also is less likely to be relevant to future forbearance proceedings because it is so specific. For instance, the exact extent of a party's deployment of DS-3 circuits in the most densely covered wire centers in Virginia Beach will not be particularly useful in a later proceeding involving Phoenix or San Diego, particularly if such deployment is only one factor being considered. Indeed, much of the highly sensitive information provided in the Omaha proceeding was not included in the final order because it was not deemed to be relevant to the Commission's decision.¹⁰

For these reasons, the Commission should adopt special protection for highly sensitive information if it modifies the protective order. At a minimum, such information should be made available only to participants in this proceeding and should be used only in connection with this proceeding and any related court appeals. Parties also should be permitted to file highly sensitive information separately from other information, and with a specific designation of sensitivity. The Commission also should consider imposing copying restrictions on material that is designated as highly sensitive, so as to minimize the risk of accidental exposure to non-signatories.¹¹ Further, and consistent with the Commission's existing procedures under Section

⁹ While such information obviously would be of value to Verizon, it actually might be more valuable to other competitive local exchange carriers. These carriers could use the information to decide to attack markets that appear to be more lucrative because a larger competitor has targeted them or, conversely, to seek out niche markets where the larger competitor is not focusing its resources.

¹⁰ *Compare Omaha Forbearance Order*, 20 FCC Rcd at 19451 with Letter of J.G. Harrington, counsel to Cox, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-223, August 27, 2005.

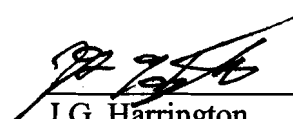
¹¹ One potential restriction is to require parties to provide a list of each individual who receives a copy of any document containing highly sensitive information.

0.461 of the rules, any party that submits highly sensitive information should be afforded an opportunity to respond if there is any request for release of the highly sensitive data or if the Commission is considering releasing that data on its own motion.¹² These protections should be adopted in addition to the existing provisions of the protective order, including the provision that requires parties to return or destroy confidential materials when the proceeding is complete.¹³

For all these reasons, Cox Communications, Inc. respectfully requests that the Commission adopt an order consistent with these comments.

Respectfully submitted,

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October 26, 2006

¹² See 47 C.F.R. § 0.461.

¹³ See Protective Order, ¶ 14.

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow Lohnes PLLC, do hereby certify that on this 26th day of October, 2006, copies of the foregoing Opposition of Cox Communications, Inc. to Motion to Modify Protective Order were served via hand delivery or first-class mail postage prepaid (denoted by *), to the following:

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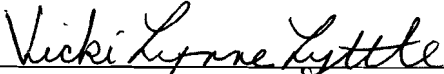
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